Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")	)	CG Docket No. 11-116
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

CONSUMER TELCOM, INC.'S COMMENTS

This law firm represents Consumer Telcom, Inc. ("CTI"), a non-facilities based long-distance carrier authorized by the Federal Communications Commission ("FCC") to resell interstate long-distance service to subscribers throughout the United States. CTI does not perform its own billing and collection function, but instead bills and collects its subscribers through various local exchange carriers ("billing LEC" or "LEC") serving CTI's subscribers with local exchange service. CTI utilizes LECs for billing and collection because it allows CTI to compete in long-distance market without incurring the substantial costs associated with this function if it were performed in-house. Additionally, CTI's utilization of LEC billing affords CTI's subscribers the convenience of a single bill for both local exchange in long-distance services.

CTI only bills its customer through the LECs for CTI's long-distance services, and does not engage in third-party billing for non-carrier services of any kind. Nonetheless, CTI has an interest in the above-captioned proceeding to the extent the FCC proposes rules that would prohibit all or most third-party charges from being placed on telephone bills or requiring carriers to obtain a consumer's affirmative consent before placing third-party charges on their own bills

to consumers. The FCC refers to this latter proposal as an "opt-in" approach to deter cramming. Additionally, the FCC proposes rules that would require the disclosure of the option of a blocking service to consumers. CTI focuses its comments on these two proposals, and the use of the term "third-party charges" in the proposals.

CTI is opposed to the “opt-in” approach for “third-party charges” as proposed in the above-referenced proceedings because it will have a deleterious effect on CTI's ability to bill for its charges to customers through the LECs, as well as CTI’s ability to compete in the long-distance market. LEC billing can be classified or viewed as “third-party charges.” Thus, if the FCC were to adopt an “opt-in” rule for “third-party charges,” the FCC should make it abundantly clear that this term as used in the rule only applies to "*non-carrier* third-party charges." CTI is concerned that if the FCC does not distinguish between "carrier third-party billing" and "non-carrier third-party" billing in a new “opt- in” rule, a consumer could become confused when given the opportunity to “opt-in” to “third-party charges”, and therefore, refuse to “opt-in” and reject CTI's long distance services (or indeed the carrier services of any carrier that utilizes LEC billing) even though the consumer previously had his or her subscription to CTI's services verified in accordance with the FCC's current verification rules. In such circumstances, CTI (as well as those carriers who utilize LEC billing) would lose subscribers because of a vague FCC rule causing customer confusion. Moreover, since “third-party charges,” including CTI’s carrier third-party charges, are routinely billed in arrears, if the consumer rejects “third-party charges” under an “opt-in” rule, CTI would be unable to bill and collect such charges. CTI would then have to write off these charges as uncollectable and deduct them from its reportable interstate revenues for universal service fund purposes. In these circumstances, the Universal Service Fund (“Fund”) will receive less money collected to the detriment of those entities that receive

assistance from the Fund. To be sure, if the FCC were to adopt an "opt-in" rule without the above described distinction, it would result in less contributions to the Fund, a reduction in competition, including the development and offering of new and innovative products and services, between resellers and facilities-based carriers, including the LECs, translating into less choice and higher rates for long distance services to consumers, a consequence which is inimical to the FCC's long established policies fostering competition in telecommunications services.

If the FCC does not make the distinction between "carrier" third-party charges and "non-carrier" third-party charges in fashioning rules to address cramming, the FCC should not adopt any "opt-in" rule. Instead, the FCC should simply allow its current rules set forth in 47 C.F.R. §64.1120 to continue to serve as an "opt-in" rule with respect to carrier third-party charges. These rules already require that a long-distance provider obtain an individual subscriber's consent, either in writing or electronically recorded, before the provider can effect a consumer change in long-distance carriers. Moreover, CTI submits that the FCC need not adopt an "opt-in" rule for CTI's subscribed (as opposed to prescribed) long-distance services such as collect calling, travel card calls, and dial around calls. When a consumer receives through CTI a long-distance collect call, or utilizes his or her CTI long-distance calling card or travel card, or dials around to CTI long-distance services, the consumer effectively "opts-in" to such services. Accordingly, an "opt-in" rule is not really necessary for these kinds of "carrier third-party charges."

If the FCC decided to adopt any "opt-in" rule, as CTI discusses above, the FCC should restrict the rule to "*non-carrier* third-party charges" rather than adopting a rule affording a consumer the opportunity to simply "opt-in" to "third-party charges." Indeed, the customer confusion CTI described above likely will begin when the FCC's blocking rule, adopted on April

27, 2012, is implemented by those carriers offering blocking. CTI notes that the FCC, in adopting final rule §64.2401 (f), captioned "Blocking of third-party charges," in its April 27, 2012 Report and Order, did not distinguish between "carrier" third-party charges and "non-carrier" third-party charges in mandating that carriers offering subscribers the option to block "third-party charges." CTI submits that this final rule should be amended so as to require carriers offering the option not to block all third-party charges, but only "*non-carrier*" third-party charges. Otherwise, this final rule, like any proposed "opt-in" rule pertaining to only "third-party charges" will likely cause confusion among consumers resulting in the unintentional consequences to competition between resellers with facilities-based carriers as CTI described above.

To eliminate any confusion by an "opt-in" rule or blocking rule limited to just "third-party charges," the FCC could also require carriers who bill non-carrier third-party charges to consumers on their telephone bills to verify through an independent third-party verifier the consumer's election to add such charges in this manner. Along these lines, the FCC could require that a carrier billing third-party charges obtain a new LOA or recorded verification limited to "non-carrier" third-party charges. If the FCC were to adopt this approach, it should be extremely careful not to allow an LEC billing such charges to obtain access to records revealing the consumer's choice of long-distance providers and their services. A billing LEC's access to such records would be unfair to competing long-distance providers by affording the billing LEC the advantage of marketing its long-distance services to the consumer with the knowledge of the customer's existing long-distance provider' services, under the guise of obtaining approval for billing of non-carrier third-party charges. Under the FCC's current rules, the LECs currently cannot gain access to a local exchange customer's non-local exchange telephone services

records. CTI submits that if the FCC were to allow billing LECs such access, it would also seriously injure competition which is now pervasive in the long-distance market due to the FCC's policies encouraging competition.

CTI is, as set forth above, concerned about blocking "third-party charges from appearing on telephone bills" as set forth in §64.2401(f). In addition to CTI's comments above about the need to amend this rule to limit such blocking to "non-carrier" third-party charges, CTI questions whether billing LECs have the present capability to separate “carrier third-party charges" and "non-carrier third-party charges" under their billing regimens. If the billing LECs do not have such capability, the blocking rule, even if amended to exclude carrier third-party charges," cannot be implemented without billing LECs making changes to their billing software. CTI, however, understands that many billing LECs or other billing entities that bill “third-party services” are beginning to voluntarily reject the billing of “non-carrier” third-party charges because of unscrupulous persons that engage in cramming. Thus, it appears likely that in the near future billing LECs and other billing entities will prohibit the billing of such non-carrier charges altogether. If the record in this proceeding establishes that those carriers who bill non-carrier third-party charges intend to refuse the billing of such charges, there would be no need for an "opt-in" or blocking notification rule. Likewise, there would be no need to enforce §64.2401 (f).

If, however, the record shows that billing carriers can, or will be able to, separate carrier from non-carrier third-party charges, the FCC should withhold the effectiveness of when of a blocking notification rule until all billing carriers certify to the FCC that their billing process allows them to exclude carrier third-party charges from non-carrier third-party charges.

Wherefore, CTI respectfully urges the FCC to clearly exclude carrier third-party telecommunication service charges from "third-party charges" in any "opt-in" or blocking notification rule it adopts pursuant to the above captioned dockets, as well as consider effects on competition in the long distance market if the FCC adopts "opt-in" or blocking notification rules without this exclusion.

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Respectfully submitted,

/s Michael L. Glaser .
Michael L. Glaser
Law Offices of Michael L. Glaser, LLC
1720 S. Bellaire St., Suite 607
Denver, CO 80222
303-757-1600
mglaser@glaserlegal.com
Attorney for Consumer Telcom, Inc.